

What Judges Need to Know About the New Proposed Judicial Ethics Rules

**Tennessee Municipal Judges Conference
Saturday, August 6, 2011**

**PROPOSED NEW
TENNESSEE CODE OF JUDICIAL CONDUCT**

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating their conduct through disciplinary agencies.

Comparison to ABA Model Code

The Preamble is adopted from the 2007 ABA Model Code with only one change, the deletion of the word “Model” in Paragraph [3].

Comparison to Current Tennessee Code

The Preamble is now limited to describing the general purpose and rationale of the Code. The Scope section explains the structure of the Code and how the Rules are intended to operate. Paragraph [2] is new.

SCOPE

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as “may” or “should,” the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term “must,” it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

Comparison to ABA Model Code

The Scope is adopted from the 2007 ABA Model Code without modification, except for the deletion of the word “Model” in Paragraphs [1] and [5].

Comparison to Current Tennessee Code

The Scope is a new section added to the Code that contains the provisions from the Preamble that explain the structure of the Code and how the various parts of the Code are intended to operate. The Scope explains that judges may be disciplined only for violating a Rule. The Canons are overarching principles that provide important guidelines.

TERMINOLOGY

“Aggregate,” in relation to contributions for a candidate, means not only contributions in cash or in kind made directly to a candidate’s campaign committee, but also all contributions made indirectly with the understanding that they will be used to support the election of a candidate or to oppose the election of the candidate’s opponent. *See* Rules 2.11 and 4.4.

“Appropriate authority” means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. *See* Rules 2.14 and 2.15.

“Contribution” means both financial and in-kind contributions, such as goods, professional services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure. “Contribution” includes but is not limited to a contribution as defined by Tennessee Code Annotated section 2-10-102(4). *See* Rules 2.11, 2.13, 3.7, 4.1, and 4.4.

“De minimis,” in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge’s impartiality. *See* Rule 2.11.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. *See* Rules 2.11, 2.13, 3.13, and 3.14.

“Economic interest” means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- an interest in the individual holdings within a mutual or common investment fund;

- an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

- a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

- an interest in the issuer of government securities held by the judge.

See Rules 1.3 and 2.11.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian. *See* Rules 2.11, 3.2, and 3.8.

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. *See* Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

“Impending matter” is a matter that is imminent or expected to occur in the near future. *See* Rules 2.9, 2.10, 3.13, and 4.1.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge’s independence, integrity, or impartiality. *See* Canon 1 and Rule 1.2.

“Independence” means a judge’s freedom from influence or controls other than those established by law. *See* Canons 1 and 4 and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character. *See* Canon 1 and Rule 1.2.

“Judicial candidate” means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election or appointment. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office. “Judicial candidate” includes but is not limited to a “candidate” as defined by Tennessee Code Annotated section 2-10-102(3). *See* Rules 2.11, 4.1, 4.2, and 4.4.

“Judicial Settlement Conference” means a mediation conducted by a judicial officer as defined in Tenn. Sup. Ct. Rule 31.

“Knowingly,” “knowledge,” “known,” and “knows” mean actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances. *See* Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

“Law” encompasses court rules as well as statutes, constitutional provisions, rules and regulations, and decisional law. *See* Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

“Member of the candidate’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

“Member of the judge’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. *See* Rules 3.7, 3.8, 3.10, and 3.11.

“Member of a judge’s family residing in the judge’s household” means any relative of a judge by blood, adoption or marriage, or a person treated by a judge as a member of the judge’s family, who resides in the judge’s household. *See* Rules 2.11 and 3.13.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, dependency and neglect cases, or psychiatric reports. *See* Rule 3.5.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. *See* Rules 2.9, 2.10, 3.13, and 4.1.

“Personally solicit” means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made in person or by letter, telephone, or any other means of communication, including electronic communication. *See* Rule 4.1.

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. “Political organization” includes but is not limited to an affiliated political campaign committee as defined by Tennessee Code Annotated section 2-10-102(1), a multi-candidate political campaign committee as defined in Tennessee Code Annotated section 2-10-102(9) and a political campaign committee as defined in Tennessee Code Annotated section 2-10-102(12). For purposes of this Code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.4. *See* Rules 4.1 and 4.2.

“Public election” includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. *See* Rules 4.2 and 4.4.

“Third degree of relationship” includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. *See* Rule 2.11.

Comparison to ABA Model Code

The Terminology section is adopted from the 2007 ABA Model Code with the following changes:

The first paragraph explaining the use of asterisks (*) is not adopted and all asterisks are deleted.

The definition of “Judicial candidate” is expanded to include, but is not limited to, a “candidate” as defined by Tennessee Code Annotated section 2-10-102(3).

"Judicial Settlement Conference" is a new defined term.

“Law” includes rules and regulations.

“Member of a family” includes relatives by adoption.

From the definition of “Nonpublic information,” “presentencing reports” has been deleted, but “dependency” has been replaced by “dependency and neglect.”

“Personally solicit” has been modified to include in person and electronic communications.

“Political organization” has been cross-referenced to included Tennessee statutes.

Comparison to Current Tennessee Code

Definitions of the following terms are added to the Terminology section: Aggregate; Domestic Partner; Impartial, impartiality and impartially; Impending matter; Impropropriety; Independence; Integrity; Judicial Candidate; Judicial Settlement Conference; Pending Matter; Personally solicit; Political Organization; and Public Election.

“Candidate” is now included in “Judicial Candidate.” “Court personnel” and “Election” have been deleted, as has “Require.” “Economic interest” has been modified.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all full-time judges. Parts III through V of this section identify provisions that apply to the three categories of part-time judges only while they are serving as judges, and provisions that do not apply to part-time judges at any time. Rules that do not appear in Sections III through V are therefore applicable to part-time judges at all times. The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including but not limited to an officer such as a magistrate, referee, court commissioner, judicial commissioner, special master, or an administrative judge or hearing officer.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function, and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

[3] Some states, including Tennessee, have created courts in which judges are authorized by court rules to act in nontraditional ways. For example, judges presiding in drug courts and monitoring the progress of participants in those courts' programs may be authorized and even encouraged to communicate directly with social workers, probation officers and others outside the context of their usual judicial role as independent decision makers on issues of fact and law. Judges serving on such courts shall comply with this Code except to the extent laws or court rules provide and permit otherwise. *See* Rule 2.9 Comment [4].

[4] The Secretary of State, in accordance with Tennessee Code Annotated section 4-5-321(b), adopted a code of conduct for all administrative judges and hearing officers:

Tenn. Rules and Regs. Ch. 1360-4-1-.20. Code of Judicial Conduct

Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all administrative judges and hearing officers of the State of Tennessee. However, any complaints regarding any individual administrative judge's or hearing officer's conduct under the code shall be made to the chief administrative judge or hearing officer or other comparable entity with

supervisory authority over the administrative judge or hearing officer, and any complaints about the chief administrative judge or hearing officer shall be made to the appointing authority.

The provisions of Tennessee law dealing with the Court of the Judiciary are not applicable to administrative judges and hearing officers of the State of Tennessee.

See Tenn. Code Ann. Title 17, Chapter 5.

[5] This provision does not apply to special commissioners performing nonjudicial functions.

II. SENIOR JUDGE

A judge designated as a senior judge or justice, who by law is not permitted to practice law, is required to comply with the provision of this Code to the same extent as a full time judge.

COMMENT

[1] For the purposes of this section, a senior judge is considered to “perform judicial functions.” Tennessee Code Annotated section 17-2-302 specifically prohibits senior judges from practicing law and further requires their compliance with this Code.

III. CONTINUING PART-TIME JUDGE

A judge who serves repeatedly on a part-time basis by election or under a continuing appointment is a “continuing part-time judge.” These include, but are not limited to, part-time judges, referees, and judicial commissioners in the general sessions, juvenile, municipal and other courts. A continuing part-time judge:

(A) is not required to comply at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11(B) (Financial, Business, or Remunerative Activities), and

(B) shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

COMMENT

[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties, and only to the extent authorized by the Rules of Professional Conduct.

[2] Although a continuing part-time judge is precluded from practicing law in any court subject to the appellate jurisdiction of the court on which the judge serves, this rule does not

prevent the judge from practicing in a court to which an appeal lies from the judge's court. For example, a part-time general sessions court judge may practice in circuit court so long as the proceeding is not one in which the judge served as a judge or a proceeding related thereto.

IV. [INTENTIONALLY OMITTED]

V. PRO TEMPORE PART-TIME JUDGE

A pro tempore part-time judge who serves or expects to serve once or only sporadically on a part-time basis under a separate appointment for each period of service or for each case heard is not required to comply:

(A) except while serving as a judge, with Rules 2.4 (External Influences on Judicial Conduct), 3.2 (Appearances before Governmental Bodies and Consultation with Government Officials); and 4.1 (Political and Campaign Activities of Judges and Judicial Candidates in General) (A)(1) through (7); or

(B) at any time with Rules 3.4 (Appointments to Governmental Positions), 3.8 (A) (Appointments to Fiduciary Positions), 3.9 (Service as Arbitrator or Mediator), 3.10 (Practice of Law), and 3.11 (B) (Financial, Business, or Remunerative Activities).

VI. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge. To the extent such activities are related to the judge's law practice, the 180 day requirement related to the winding up of a law practice applies. See Rule 3.10 and Comment [2] thereto.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period but in no event longer than one year. To the extent such activities are related to the judge's law practice, the 180 day requirement related to the winding up of a law practice applies. See Rule 3.10 and Comment [2] thereto.

Comparison to ABA Model Code

Application I is similar to the 2007 ABA Model Code, but has been tailored to Tennessee law and recognizes the types of judicial officers that exist in this state. Part IV is deleted,

reducing the number of categories of judges from four to three because Tennessee does not have “periodic part-time judges.” Part II is modified to reflect Tennessee’s “senior judges,” instead of “retired judges subject to recall.” Because senior judges are prohibited by statute from practicing law, Part II is substantially rewritten.

In Part III, the reference to “retired judges subject to recall” is deleted, but examples are given of categories of continuing part time judges. The exemption from compliance with Rules 3.14 and 3.14 and all Rules under Canon 4 is deleted. Part III, Comment [2] is new. In Part V, a significant reduction is made in the number of Rules a pro tempore part time judge is exempt from following. The following Rules were deleted from the exemption: Rule 1.2, Rule 2.10, Rule 3.6, Rule 3.7, Rule 3.13, Rule 3.15, and all Rules in Canon 4. In Part VI and its Comment, Tennessee’s 180 day rule in which a new judge must wind up a practice is referenced.

Comparison to Current Tennessee Code

The Application section has been restructured. Part I explains the structure. Comment [3] thereto addresses and describes certain nontraditional courts, sometimes referred to as “problem solving courts”, and cross-references Rule 2.9 Comment [4]. Comment [4] cites the statute and regulation regarding administrative law judges and specifically states that the provisions of law dealing with the Court of the Judiciary are inapplicable. Comment [5] exempts special commissioners performing nonjudicial functions.

Part II imposes the same obligations on a senior judge as are imposed on a full-time judge. This is a change of current Tennessee Code, but is consistent with Tennessee Code Annotated section 17-2-302, which prohibits senior judges from practicing law. In Part III, rules involving compensation and reimbursement and provisions regarding a candidate seeking appointment are no longer inapplicable to continuing part-time judges.

CANON 1

A JUDGE SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE JUDICIARY, AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

Comparison to ABA Model Code

Canon 1 is adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Canon 1 combines most of the subject matter of current Canons 1 and 2 into a single Canon. It addresses both the obligation of judges to uphold the independence, integrity, and impartiality of the judiciary found in Tennessee Canon 1 and the obligation to avoid impropriety and the appearance thereof found in Tennessee Canon 2. Canon 1 is slightly expanded by the requirement that a judge not only uphold, but also promote, the independence, integrity, and impartiality of the judiciary. The word “impartiality” is added to independence and integrity in proposed Canon 1 and throughout the Rules to underscore its importance as a fundamental value.

RULE 1.1 Compliance with the Law

A judge shall comply with the law, including the Code of Judicial Conduct.

Comparison to ABA Model Code

Rule 1.1 is adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 1.1 is derived from Canon 2A and the Commentary to Canon 1A. Reference to a judge's duty to 'respect' the law has been deleted.

RULE 1.2 Promoting Confidence in the Judiciary

A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens, and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Comparison to ABA Model Code

Rule 1.2 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 1.2 is derived from Canon 2A. Comments [1], [2], [3], and [5] are taken from the Commentary to 2A. Comment [4], regarding promoting professionalism, and Comment [6], which encourages participation in community outreach to promote public understanding of the administration of justice, are new.

RULE 1.3 Avoiding Abuse of the Prestige of Judicial Office

A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office. A judge may use official letterhead if the judge's professional knowledge is germane to the purpose of the letter, such as writing a letter of recommendation for a former or current law clerk or a letter of recommendation for admission to law school.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

Comparison to ABA Model Code

Rule 1.3 and Comments [1], [3], and [4] are adopted from the 2007 ABA Model Code without modification. A sentence added to Comment [2] clarifies that judicial letterhead should be used to provide a reference or recommendation only if the judge's professional knowledge is germane to the purpose of the letter.

Comparison to Current Tennessee Code

Rule 1.3 is derived from Canon 2B and its Commentary. The limitations in the rule now prohibit a judge from using the prestige of judicial office to advance economic, as well as personal, interests. Comment [2] makes clear that, while a judge may, based on personal knowledge, serve as a reference or write a letter of recommendation, judicial letterhead may be used only if the judge's professional knowledge is germane to the purpose of the letter.

CANON 2

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

Comparison to ABA Model Code

Canon 2 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Canon 2 is derived from Tennessee Canon 3, but includes the requirement that the judge perform the duties of office competently, as well as impartially and diligently. The title of the existing canon does not include the word “competently,” but Canon 3B(2) requires judges to be faithful to the law and maintain professional competence in it.

RULE 2.1 Giving Precedence to the Duties of Judicial Office

The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. *See* Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Comparison to ABA Model Code

Rule 2.1 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 2.1 is Canon 3A with slight modifications. Because a judge's role includes administrative, as well as judicial duties, the rule applies to "duties of judicial office" instead of "judicial duties." The word "shall" is inserted to emphasize that the Code imposes an ethical duty to give priority to the duties of judicial office. The Comments are new.

RULE 2.2 Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

Comparison to ABA Model Code

Rule 2.2 and its Comments are adopted from the 2007 ABA Model Code without modification, except that Comment [4] is modified to substitute “self-represented” for “pro se.”

Comparison to Current Tennessee Code

Rule 2.2 comes in part from the first half of the first sentence in Canon 3B(2), which requires a judge to “be faithful to the law.” Rule 2.2 requires a judge to “uphold and apply the law.” The Rule also explicitly requires the judge to apply the law “fairly and impartially.” The Comments are new.

RULE 2.3 Bias, Prejudice, and Harassment

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Comparison to ABA Model Code

Rule 2.3 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Subparagraphs (A) and (B) are derived from Canon 3B(5), with modifications. The prohibition against harassment is now in black letter law, rather than only in the Commentary. The factors on which bias, prejudice or harassment can be based have been expanded to include gender, in addition to sex, which is a term of art that may not apply to transgendered individuals. Other additional factors are ethnicity, marital status, and political affiliation. Subparagraphs (C) and (D) are taken from Canon 3B(6). Comments [1] and [2] are taken from the Commentary to 3B(5). Comments [3] and [4] are new.

Rule 2.4 External Influences on Judicial Conduct

- (A) A judge shall not be swayed by partisan interests, public clamor or fear of criticism.**
- (B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.**
- (C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.**

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge’s friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Comparison to ABA Model Code

Rule 2.4 and its Comment are adopted from the 2007 ABA Model Code without modification, except that “partisan interests” has been added to subparagraph (A).

Comparison to Current Tennessee Code

Rule 2.4(A) is the second sentence of Canon 3B(2), which includes “partisan interests.” Subparagraphs (B) and (C) are taken from Canon 2B. “Financial interests” is added to the list of influences that a judge must avoid. Comment [1] is new.

Rule 2.5 Competence, Diligence, and Cooperation

(A) A judge shall perform judicial and administrative duties competently, promptly and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

[5] A judge is required by law to promptly dispose of cases. *See, e.g.,* Tenn. Code Ann. §20-9-506 (in a non-jury case, judge must render decision and enter judgment within sixty days of completion of trial); Tenn. Code Ann. §40-30-111(d) (court must rule within sixty days of conclusion of proof; final disposition of capital case must be made within one year of filing of petition); S. Ct. R. 11, §III(c) (no case may be held under advisement for more than sixty days; motions or other decisions that delay trial or final disposition shall not be held under advisement for more than thirty days, absent most compelling of reasons).

[6] A judge should be willing to lend assistance to fellow judges in his or her district or contiguous districts caused by death, illness, recusal or case overload. Judges have an affirmative duty to interchange and, by Supreme Court policy, they have an obligation to interchange in contiguous judicial districts if needed. *See* Tenn. Code Ann. § 17-2-202, Tenn. Code Ann. § 16-2-509(d) and (e), Tenn. S. Ct. R. 11, § VII (c), and Supreme Court Policy 4.01 (Nov. 1, 2001). General sessions court judges have the same duty to interchange. Tenn. Code Ann. § 16-15-209(a)(1) and Tenn. Code Ann. § 17-2-208. Presiding judges have the necessary obligation and authority to reassign cases and judges within their districts. Tenn. Code Ann. § 16-2-509(c), Tenn. Code Ann. § 17-2-109 and Tenn. S. Ct. R. 11, § III. The Supreme Court may designate and reassign judges as necessary. Tenn. Code Ann. § 16-3-502(3)(A), Tenn. Code Ann. § 16-2-509(c), Tenn. Code Ann. § 17-2-110 and Tenn. S. Ct. R.11, § IV.

Comparison to ABA Model Code

Rule 2.5 and its Comments are adopted from the 2007 ABA Model Code with one important modification. Promptness has been added to the duties of competence and diligence in carrying out judicial and administrative tasks in the black letter law, rather than being limited to Comments. Comments [5] and [6] are new.

Comparison to Current Tennessee Code

Rule 2.5(A) combines a portion of Canon 3B(2) addressing competence and part of Canon 3C involving diligence, and adds the obligation to perform duties with promptness. The Rule applies to both judicial and administrative duties. Rule 2.5(B) is the second portion of Canon 3(C)(1), but the requirement to cooperate with other judges and court officials has been made mandatory. New Comment [1] defines competence. New Comment [2] emphasizes the duty to perform administrative functions efficiently. Comments [3] and [4] are taken from the Commentary to Canon 3(B)(8). New Comment [5] reminds judges of the mandates found in statutes and a Tennessee Supreme Court rule regarding prompt disposition of cases. New Comment [6] cites various authorities requiring judges to cooperate in the reassignment of cases, such as in the event of recusal or inability to hear a case.

Rule 2.6 Ensuring the Right to Be Heard

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage settlement of disputed matters in a proceeding but shall not act in a manner that coerces any party into settlement. A judge who participates in a judicial settlement conference shall not preside over the trial or any other contested issue in that matter.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] If a judge participates in the settlement of disputes, he or she should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are (1) whether the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) whether the parties and their counsel are relatively sophisticated in legal matters, (3) whether the case will be tried by the judge or a jury, (4) whether the parties participate with their counsel in settlement discussions, (5) whether any parties are unrepresented by counsel, and (6) whether the matter is civil or criminal.

[3] Information obtained by a judge during a judicial settlement conference is not subject to the safeguards of the rules of evidence and procedure and may place the trial judge in an untenable position as to the motions for new trial; judgment notwithstanding the verdict; additurs and remittiturs; credibility determinations; or other issues in which the judge may not be able to ignore facts that he or she learned during the settlement proceeding. Therefore, it is not appropriate for the same judge to participate in a judicial settlement conference and, if such proceeding does not result in the resolution of the matter, to subsequently preside over the trial of the same matter or participate in any other contested issue in that matter. *See also* Rule 2.11(A)(6).

[4] A judicial settlement conference, as discussed in this Rule, is a mediation conducted by a judicial officer as defined in Tenn. Sup. Ct. Rule 31. A judicial settlement conference does not include scheduling conferences or other pretrial conferences. *See, e.g.,* Tenn. R. Civ. P. 16 and Tenn. R. Crim. P. 17.1.

Comparison to ABA Model Code

Rule 2.6(A) and Comment [1] are adopted from the 2007 ABA Model Code without modification. The remaining subparagraphs of the Rule and Comments contain several changes.

The Task Force strongly felt that a judge who conducts an unsuccessful settlement conference should be precluded from presiding over the trial of the case. Comment [3] was substantially modified. As stated in revised Comment [3], information obtained by a judge during the judicial settlement process is not subject to the safeguards of the rules of evidence and procedure. After the unsuccessful settlement conference, it is impossible to unring the bell as if the settlement process and attendant disclosures had not occurred. New Comment [4] clarifies that a judicial settlement conference, as addressed in this Rule, is a mediation, rather than a procedural pretrial conference.

Comparison to Current Tennessee Code

Rule 2.6 addresses the right to be heard in greater detail than the prior Code and recognizes the role of settlement negotiations in dispute resolution. Rule 2.6(A) is the first sentence of Canon 3B(7). Rule 2.6(B) is new. The first sentence distinguishes between the permissible action of encouraging settlement and the forbidden action of coercing settlement. The second sentence is a blanket prohibition against presiding over a trial if the judge participated in a judicial settlement conference. Comment [3] fleshes out the Task Force's rationale for this provision. Comment [4] is new.

Rule 2.7 Responsibility to Decide

A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

COMMENT

[1] Judges must be available to decide the matters that come before the court. There are times, however, when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues.

Comparison to ABA Model Code

Rule 2.7 and its Comments are adopted from the 2007 ABA Model Code with only minor modifications.

Comparison to Current Tennessee Code

Rule 2.7 is Canon 3B(1) with slight modification. Comment [1] is new.

Rule 2.8 Decorum, Demeanor, and Communication with Jurors

- (A) A judge shall require order and decorum in proceedings before the court.
- (B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.
- (C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Comparison to ABA Model Code

Rule 2.8(A) and 2.8(B) and Comments [1] and [2] are adopted from the 2007 ABA Model Code without modification. Rule 2.8(C) expressly permits a judge to express appreciation to jurors for their service to the judicial system and the community. Comment [3] is clarified in light of the change to Rule 2.8(C).

Comparison to Current Tennessee Code

Rule 2.8(A) is Canon 3B(3). Rule 2.8(B) is Canon 3B(4). Rule 3B(C) is Canon 3B(10). Comment [1] is the Commentary to Canon 3B(4). Comment [2] is the Commentary to Canon 3B(10). Comment [3] is new.

Rule 2.9 Ex Parte Communications

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

(2) A judge may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties a reasonable opportunity to respond to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) [Intentionally omitted]

(5) A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

(B) If a judge receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of this Rule, to screen written ex parte communications and to take appropriate action consistent with this Rule.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications authorized by law. When serving on a mental health court or a drug court, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others. However, if this ex parte communication becomes an issue at a subsequent adjudicatory proceeding in which the judge is presiding, the judge shall either (1) disqualify himself or herself if the judge gained personal knowledge of disputed facts under Rule 2.11(A)(1) or the judge's impartiality might reasonably be questioned under Rule 2.11(A) or (2) make disclosure of such communications subject to the waiver provisions of Rule 2.11(C).

[5] A judge may consult with other judges on pending matters, but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Comparison to ABA Model Code

Rule 2.9 and its Comments are adopted from the 2007 ABA Model Code with several changes. In Rule 2.9(A)(2), the requirements for obtaining advice from a disinterested expert are relaxed. Notice to the parties need not be written nor given in advance, but the substance of the advice received must be conveyed to the parties, who have an opportunity to respond. Rule 2.9(A)(4) and the word "inadvertently" in Rule 2.9(B) were deleted. The last sentences of Comments [1] and [4] are new, and the remainder of Comment [4] has been reworded

Comparison to Current Tennessee Code

Except for the first sentence of Canon 3B(7), which is now Rule 2.6(A), Rule 2.9(A) is Canon 3B(7)(a), (b), (c) and (e) with slight wording changes. Tennessee's current provision found in Canon 3B(7)(b) regarding consultation with a disinterested expert is retained, rather than the revised provision in the 2007 ABA Model Code. Canon 3B(7)(d) regarded a judge's ex parte communication with parties and attorneys in an effort to mediate or settle a case pending before the judge, which is carried forward into Rule 2.9(A)(4) of the 2007 ABA Model Code, has been omitted in light of the proposed changes to Rule 2.6(B).

Rule 2.9(B) is new. The word "inadvertent" is omitted from the ABA Model Code provision because a judge's responsibility to act on such ex parte communications should be the same whether the communication was sent intentionally or inadvertently.

Rule 2.9(C) places in black letter law the prohibition against a judge's independent investigation or consideration of evidence presented, a concept from the sixth paragraph of the Commentary to Canon 3B(7). Rule 2.9(D) raises to black letter law the prohibition on ex parte communications by the judge's staff, which is currently found in the eighth paragraph of the Commentary to Canon 3B(7).

Comments [1], [2] and [3] are, respectively, the second third and first paragraphs of the Commentary to Canon 3B(7). An additional sentence is added to Comment [1] to allow a judge's staff to act as a gatekeeper to screen written ex parte communications. Comment [4] is new and addresses the relaxed standard for ex parte communications that is utilized in mental health courts and drug courts, but cross-references the disqualification requirements in Rule 2.11. Comments [5] through [7] are new.

RULE 2.10 Judicial Statements on Pending and Impending Cases

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity or represents a client as permitted by these Rules. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Comparison to ABA Model Code

Rule 2.10 and its Comments are adopted from the 2007 ABA Model Code without modification, except for the addition of a phrase to Comment [2]. In addition to being able to comment on proceedings in which the judge is a litigant in a personal capacity, a judge may also comment on proceedings in which the judge represents a client, in those limited situations permitted under the Rules, such as when a new judge is winding up a law practice.

Comparison to Current Tennessee Code

Rule 2.10 combines the provisions of Canons 3B(9) and 3B(10) regarding restrictions on judicial speech. Rules 2.10(A), (C), and (D) are Canon 3B(9) reworded and slightly broadened. Rule 2.10(B), which prohibits a judge from making pledges, promises, or commitments regarding cases, controversies or issues that are likely to come before the judge, is new, as is 2.10(E). Comments [1] and [3] are new. Comment [2] is derived from the Commentary to 3B(9).

RULE 2.11 Disqualification

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or is a party to the proceeding.

(4) The judge knows or learns by means of a timely motion that a party, a party's lawyer, or the law firm of a party's lawyer has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned.

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy, or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment, and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

- (c) was a material witness concerning the matter;
- (d) previously presided as a judge over the matter in an inferior court; or
- (e) previously participated in a judicial settlement conference in the matter. This does not prohibit the judge from disposing of any uncontested issues in the matter.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1) or for participation in a judicial settlement conference under paragraph (A)(6)(e), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court personnel, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court personnel, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

(D) Upon the filing of a motion seeking disqualification, recusal, or a determination of constitutional or statutory incompetence, a judge shall act promptly by written order and either grant or deny the motion, stating the reasons for the ruling, including factual findings directly addressing the grounds upon which the motion was made.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. In many jurisdictions, the term "recusal" is used interchangeably with the term "disqualification."

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to

have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification.

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the judge.

[7] The fact that a lawyer in a proceeding, or a litigant, contributed to the judge's campaign, or supported the judge in his or her election does not of itself disqualify the judge. Absent other facts, campaign contributions within the limits of the "Campaign Contributions Limits Act of 1995," Tennessee Code Annotated Title 2, Chapter 10, Part 3, or similar law should not result in disqualification. However, campaign contributions or support a judicial candidate receives may give rise to disqualification if the judge's impartiality might reasonably be questioned. In determining whether a judge's impartiality might reasonably be questioned for this reason, a judge should consider the following factors among others:

- (1) The level of support or contributions given, directly or indirectly, by a litigant in relation both to aggregate support (direct and indirect) for the individual judge's campaign and to the total amount spent by all candidates for that judgeship;
- (2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the disqualification question;
- (3) The timing of the support or contributions in relation to the case for which disqualification is sought; and
- (4) If the supporter or contributor is not a litigant, the relationship, if any, between the supporter or contributor and (i) any of the litigants, (ii) the issue before the court, (iii) the judicial candidate or opponent, and (iv) the total support received by the judicial candidate or opponent and the total support received by all candidates for that judgeship.

[8] Trial judges sometimes sit by designation on courts of appeal, and vice versa. Such judges should not hear cases over which they presided in a different court, and paragraph A(6)(d) makes that clear. This Rule, however, applies only to judges who have heard the case in “an inferior court,” and does not apply to a judge who decided a case on a panel of an appellate court subsequently participating in the rehearing of the case en banc with that same court.

[9] There are several bases upon which a judge should determine whether to preside over a case. These include this Rule, Tennessee Constitution Article VI, Section 11 (incompetence) and Tenn. Code Ann. Title 17, Chapter 2 (incompetence, disability and interchange). This Rule requires judges to employ constitutional, statutory and procedural rules to determine motions for issues related to whether the judge should preside over a case.

Comparison to ABA Model Code

Rule 2.11 and its Comments are adopted from the 2007 ABA Model Code with several changes. Rule 2.11(A)(4) does not contain a dollar amount of support that triggers disqualification, but instead has a more flexible standard. Rule 2.11(A)(6)(d) only requires disqualification if the judge previously presided over the matter in an inferior court. Rules 2.11(A)(6)(e) and 2.11(D) are new, as are Comments [7] through [9]. Rule 2.11(C) has been modified slightly to reference participation in a judicial settlement conference.

Comparison to Current Tennessee Code

Rule 2.11 is derived from Canons 3E and 3F. Rule 2.11(A) and its subparagraphs (1), (2), and (3) are Canon E(1) and its subparagraphs, with modifications. “Domestic partner” is added to the Rule and treated comparably to a spouse for purposes of evaluating conflicts. Rule 2.11(A)(4) is new and requires disqualification if a party, lawyer or lawyer’s firm made such contributions or support to the judge’s campaign as to call impartiality into question. Also new is Rule 2.11(A)(5), which requires disqualification if the judge has previously made public statements that appear to commit the judge to reach a particular result in the case.

Rule 2.11(A)(6)(a) through (c) are derived from Canon 3E(1)(b) and its Commentary. Subparagraphs (d) and (e) are new, and the latter requires disqualification of a judge who participated in a judicial settlement conference in the case, except for the handling of uncontested matters, such as entry of the agreed judgment. Rules 2.11(B) and (C) are Canons 3E(2) and 3F, respectively, with minor changes.

New Rule 2.11(D) provides for adjudication of contested motions for disqualification. Changes are also proposed to the Rules of Civil, Criminal and Appellate Procedure to address this issue.

The first sentence of Comment [1] is taken from the first sentence to the Commentary to Canon 3E(1). The second sentence is new. Comments [2] and [6] through [9] are new. Comment [3] comes from the third paragraph of Commentary to Canon 3E(1). Comment [4] is derived from the Commentary to Canon 3E(1)(d). Comment [5] is the second paragraph of Commentary to Canon 3E(1).

RULE 2.12 Supervisory Duties

(A) A judge shall require court staff, court officials, and others subject to the judge’s direction and control to act in a manner consistent with the judge’s obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge’s direction or control. A judge may not direct court personnel to engage in conduct on the judge’s behalf or as the judge’s representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly. For further guidance on supervisory duties, *see* Tennessee Code Annotated section 16-2-509(b) (duties of the presiding judge) and other applicable laws, such as Metropolitan Nashville Charter § 14.09A.

Comparison to ABA Model Code

Rule 2.12 and its Comments are adopted from the 2007 ABA Model Code without modification except for the addition of a sentence added to Comment [1] cross-referencing relevant Tennessee law.

Comparison to Current Tennessee Code

Rule 2.12 combines Canons 3C(2) and 3C(3). The Comments are new.

RULE 2.13 Administrative Responsibilities

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) A judge shall not appoint a lawyer to a position if the judge either knows that the lawyer, the lawyer's firm or the lawyer's spouse or domestic partner, has made contributions or given such support to the judge's campaign that the judge's impartiality might reasonably be questioned, or learns of such contribution or support by means of a timely motion by a party or other person properly interested in the matter, unless:

(1) the position is substantially uncompensated;

(2) the lawyer has been selected in rotation from a list of qualified and available lawyers compiled without regard to their having made political contributions or given support; or

(3) the judge or another presiding or administrative judge affirmatively finds that no other lawyer is willing, competent, and able to accept the position.

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

(D) When a judge refers litigants to community resources as a condition or requirement relating to litigation, such referrals shall be made impartially and on the basis of merit. A judge shall avoid nepotism and favoritism. For purposes of this provision, a "community resource" is any person or organization providing services such as, but not limited to: counseling services; driver education or traffic safety programs; mental health, substance abuse, or other treatment programs; parenting classes; private probation services; and similar types of services.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, magistrates, commissioners, special masters, special judges, substitute judges, receivers, and guardians, and personnel such as clerks, secretaries, and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative, as well as those relatives defined in Tennessee Code Annotated sections 8-31-101 et seq., the Tennessee State Employees Uniform Nepotism Policy.

[3] The rule against making administrative appointments of lawyers who have provided such contributions or support to a judge's election campaign that the judge's impartiality might reasonably be questioned includes an exception for positions that are substantially uncompensated, such as those for which the lawyer's compensation is limited to reimbursement for out-of-pocket expenses. In determining whether a judge's impartiality might reasonably be questioned in connection with such appointments, a judge should consider the following factors among others:

(1) The level of support or contributions given, directly or indirectly, by a lawyer, the lawyer's firm or the lawyer's spouse or domestic partner, in relation both to aggregate support (direct and indirect) for the individual judge's campaign and to the total amount spent by all candidates for that judgeship;

(2) If the support is monetary, whether any distinction between direct contributions or independent expenditures bears on the question of the judge's impartiality; and

(3) The timing of the support or contributions in relation to the appointment.

[4] It is increasingly common for trial judges, either directly or acting through court employees or court-affiliated agencies, to refer litigants to a variety of community resources. For example, litigants may be required by a court to complete treatment programs, parenting classes, driver education or traffic safety programs, etc., or to be monitored by private probation services. Paragraph (D) requires that such referrals be made impartially and on the basis of merit, and without nepotism or favoritism.

Comparison to ABA Model Code

Rules 2.13(A) and (C) are adopted from the 2007 ABA Model Code without modification. The bright line test of a specific dollar amount of campaign contributions has been deleted from Rule 2.13(B) and replaced with a more flexible test, the application of which is detailed in modified Comment [3]. Rule 2.13(D) is new. In Comment [1], the categories of appointees of a judge have been expanded. Comment [2] has been modified to incorporate Tennessee law regarding nepotism. Comment [4] is new.

Comparison to Current Tennessee Code

Rule 2.13 is derived from Canons 3C(4) and 3C(5) and the Commentary thereto. Rule 2.13(B) brings into black letter law a prohibition on making appointments based on campaign contributions or support. Comment [3] explains how to determine whether such support rises to an inappropriate level.

RULE 2.14 Disability and Impairment

A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] “Appropriate action” means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge’s responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge’s attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. *See* Rule 2.15.

Comparison to ABA Model Code

Rule 2.14 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 2.14 and its Comments are new.

RULE 2.15 Responding to Judicial and Lawyer Misconduct

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge’s honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question regarding the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct should take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge’s obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one’s judicial colleagues or members of the legal profession undermines a judge’s responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct, but receives information indicating a substantial likelihood of such misconduct, should take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation, or reporting the suspected violation to the appropriate authority or other agency or body.

Comparison to ABA Model Code

Rules 2.15(A) and (B) and Comment [1] are adopted from the 2007 ABA Model Code without modification. In Rules 2.15(C) and (D), “shall” is replaced by “should.” In Comment [2], “is required to” is replaced by “should.”

Comparison to Current Tennessee Code

Rule 2.15 is a modified version of Canons 3D(1) and (2) and the Commentary thereto, but a judge's duties remain unchanged from the current Tennessee Code.

RULE 2.16 Cooperation with Disciplinary Authorities

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

Comparison to ABA Model Code

Rule 2.16 and its Comment are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 2.16 and its Comment are new.

CANON 3

A JUDGE SHALL CONDUCT THE JUDGE’S PERSONAL AND EXTRAJUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF JUDICIAL OFFICE.

Comparison to ABA Model Code

Canon 3 is adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Canon 3 and its Rules are based primarily on Canon 4, along with portions of Canon 2 involving judge’s personal activities. The new Canon expands the reach of this Canon to include “personal” as well as “extrajudicial” activities and replaces “conflict with judicial obligations” with “conflict with the obligations of judicial office.”

RULE 3.1 Extrajudicial Activities in General

A judge may engage in personal or extrajudicial activities, except as prohibited by law or this Code. However, when engaging in such activities, a judge shall not:

- (A) participate in activities that will interfere with the proper and timely performance of the judge's judicial duties;**
- (B) participate in activities that will lead to frequent disqualification of the judge;**
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;**
- (D) engage in conduct that would appear to a reasonable person to be coercive; or**
- (E) make inappropriate use of court premises, staff, stationery, equipment, or other resources.**

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. *See* Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities, and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's personal and extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. *See* Rule 3.6.

[4] While engaged in personal or extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably, or would do so to curry favor with the judge.

Comparison to ABA Model Code

Rule 3.1 and its Comments are adopted from the 2007 ABA Model Code with slight modifications. The word “personal” is added to make the Rule more complete and accurate. The addition of “and timely” to Rule 3.1(A) reflects the reality that participation in too many activities can impair the performance of judicial duties. Rule 3.1(E) is reworded to recognize that. In limited circumstances, non-law related use of court resources may be appropriate. For example, a judge might appropriately ask an administrative assistant to cancel the judge’s personal appointment when a trial runs late. Similarly, a judge might check the weather forecast on the office computer.

Comments [1] and [2] are adopted from the 2007 ABA Model Code without modification. Comments [3] and [4] are adopted from the 2007 ABA Model Code, but specifically address personal, as well as extrajudicial, activities.

Comparison to Current Tennessee Code

Rule 3.1 is similar to Canon 4A, but is organized to permit extrajudicial activities, except where specifically prohibited. It also specifically encompasses personal, as well as extrajudicial, activities. Rule 3.1(A) is Canon 4A(3), but with the addition of the prohibition against activities that prevent a judge from “timely” performance of judicial duties. Rule 3.1(B) is new, derived from Canon 4A(3), but contains more specific content regarding activities that would lead to frequent disqualification. Rule 3.1(C) is based upon Canon 4A(1), but with expanded coverage and revised language. Rule 3.1(C) substituted the phrase “would appear to a reasonable person to undermine” for “cast reasonable doubt on,” and broadened coverage from “act impartially” to “the judge’s independence, integrity, or impartiality.”

Rule 3.1(D) is new and adds a new provision to guard against overt or subtle efforts by a judge to coerce others into participating in extrajudicial activities favored by the judge. Rule 3.1(E) is new, but has some overlap with aspects of Canon 2B (“lend the prestige of judicial office to advance the private interests of the judge or others”). It adds a new prohibition against inappropriately using court facilities and other resources for a judge’s extrajudicial activities.

Comment [1] is derived from the first paragraph of the Commentary following Canon 4B, although the subject matter of Canon 4B, Avocational Activities, is not addressed separately. Comment [2] is based upon the first paragraph of the Commentary following Canon 4A. Comment [3] is similar to the second paragraph of the Commentary to Canon 4A. Comment [4] is new.

RULE 3.2 Appearances before Governmental Bodies and Consultation with Government Officials

A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is self-represented in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice, and may properly share that expertise with governmental bodies and executive or legislative branch officials.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in personal or extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

[4] On occasion, some judges, including general sessions court judges, juvenile court judges and municipal court judges, find it necessary to appear before legislative bodies to address budget requests and similar concerns. Such appearances fall within the exceptions set forth in 3.2(A) and (B). Similarly, judges may appear before governmental bodies to endorse projects and programs directly related to the law, the legal system, the administration of justice and the provision of services to those coming before the courts, and may actively support the need for funding of such projects or programs. This support can occur by personal appearance or by writing, such as a letter to be submitted with a request for funding by an entity that provides services to those coming before the courts.

Comparison to ABA Model Code

Rule 3.2 and Comments [1] and [3] are adopted from the 2007 ABA Model Code without modification. Comment [2] specifically addresses personal, as well as extrajudicial, activities. The term “self-represented” replaces “pro se.” Comment [4] is new.

Comparison to Current Tennessee Code

Rule 3.2(A) is similar to Canon 4C(1). The addition of the term “voluntarily” demonstrates that the Rule’s prohibitions do not apply to a judge who has been subpoenaed. Rule 3.2(B) is new. Rule 3.2(C) is essentially the same as the last clause of Canon 4C(1), but adds that a judge may appear when acting in a fiduciary capacity. All of the Comments are new.

RULE 3.3 Testifying as a Character Witness

A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly subpoenaed.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. *See* Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

Comparison to ABA Model Code

Rule 3.3 and its Comment are adopted from the 2007 ABA Model Code. The word “summoned” has been changed to “subpoenaed.”

Comparison to Current Tennessee Code

Rule 3.3 is similar to the last sentence of Canon 2B, which prohibits a judge from testifying voluntarily as a character witness, but clarifies the types of proceedings to which it applies. Comment [1] is a simplified version of the last paragraph of the Commentary to Canon 2B.

RULE 3.4 Appointments to Governmental Positions

A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Comparison to ABA Model Code

Rule 3.4 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 3.4 is a simplified version of the first sentence of Canon 4C(2). Comment [1] is based on the Commentary to Canon 4C(2). The second sentence of Canon 4C(2) has been moved from black letter law and placed in Comment [2].

RULE 3.5 Use of Nonpublic Information

A judge shall not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties. The judge should take special care to ensure that court staff, court officials, and others subject to the judge’s direction and control are aware of this Rule and shall require them to act in a manner consistent with the judge’s obligations under this Code. *See* Rule 2.12(A).

[2] This Rule is not intended, however, to affect a judge’s ability to act on information as necessary to protect the health or safety of the judge or a member of a judge’s family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Comparison to ABA Model Code

Rule 3.5 is adopted from the 2007 ABA Model Code, but with the deletion of the word “intentionally.” A judge should not, either intentionally or unintentionally, disclose or use nonpublic information acquired in a judicial capacity for unrelated purposes. Some states and the ABA have added the term “intentionally” to the 1990 version of this code provision, apparently on the theory that discipline should not be imposed for a careless disclosure. However, the resulting harm can be the same whether the disclosure is intentional or unintentional, although the sanction might be significantly different.

The first sentence of Comment [1] is adopted from the 2007 ABA Model Code with the deletion of the phrase “of commercial or other value” because protection against disclosure should also extend to nonpublic information that is not commercial and has no monetary value. For example, in the context of a criminal case, disclosure of certain nonpublic information could cause jeopardy to an individual’s safety. The second sentence is added to emphasize the importance of enforcing this Rule with respect to court staff. Comment [2] is adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 3.5 is based on Canon 3B(11), which does not differentiate between intentional and unintentional use of nonpublic information acquired in a judicial capacity. Comments [1] and [2] are new.

RULE 3.6 Affiliation with Discriminatory Organizations

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members, or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Comparison to ABA Model Code

Rule 3.6 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 3.6(A) is identical to the black-letter text of Canon 2C, except that the list of prohibited bases of invidious discrimination has been expanded by adding gender, ethnicity, and

sexual orientation. Rule 3.6(B) is based in part on a portion of the Commentary to Canon 2C. It goes further, however, and focuses on the extent of the judge's use of the benefits and facilities of a discriminatory organization.

Comments [1] and [2] are derived from the Commentary to Canon 2C, although significantly revised, recast and reorganized. Comment [3], which is also based on that Commentary, omits the prior provision allowing a judge a period of up to one year to resign from organizations that practice invidious discrimination; any active participation in such an entity is now precluded under black letter law. Comments [4] and [5], which are both new, carve out exceptions for religious and military organizations.

RULE 3.7 Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice, and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds;

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if the event concerns the law, the legal system, or the administration of justice;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or private not-for-profit educational institutions, and other not-for-profit organizations, including law-related, charitable, and other organizations. The activities permitted by paragraph (A) do not include those sponsored by or on behalf of organizations that have as a primary purpose advocating in political processes for or against change in the laws related to limited subject areas. Activities relating to such political advocacy organizations are subject to the requirements of Rule 3.1, as well as Canon 4 and the Rules thereunder. Furthermore, the activities permitted by paragraph (A) do not include those sponsored by or on behalf of organizations whose members comprise or frequently represent the same side in litigation.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph 4(A). It is also generally permissible for a judge to serve as an usher or a food server or preparer, or to perform similar functions, at fund-raising events sponsored by educational, religious, charitable, fraternal, or civic organizations. Such activities are not solicitation and do not present an element of coercion or abuse the prestige of judicial office.

[4] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

[6] With regard to a judge's obligations to supervise staff as to matters addressed in this Rule, *see* Rule 2.12.

Comparison to ABA Model Code

Rule 3.7 and all of its Comments except Comment [1] are adopted from the 2007 ABA Model Code without modification. To Comment [1] is added language clarifying that the Rule does not permit judicial participation in activities sponsored by organizations that have as a primary purpose advocating in political processes for or against changing the law. For example, accepting an award from an organization established to lobby for or against the legalization of a

particular form of mining or drilling is inappropriate. Also, language from Commentary to Tennessee's Canon 4D(5)(a) is added to reflect that judicial participation is prohibited in activities sponsored by or on behalf of organizations whose members comprise or frequently represent the same side in litigation.

Comparison to Current Tennessee Code

Rule 3.7 is based primarily on Canon 4C(3). Permissible activities are clearly subject to the requirements of Rule 3.1, which prohibits a variety of personal and extrajudicial activities, including those that could lead to frequent disqualification. The concepts in Rule 3.7(A) are no longer limited to a judge's involvement as an officer, director or trustee. The rule covers all activities related to an organization.

Rule 3.7(A)(1) and (2) are derived from Canon 4C(3)(b)(i). A judge continues to have severe restrictions on fundraising activities. Personal solicitation continues to be generally prohibited, but the exception allowing a judge to solicit funds from other judges over whom the judge has no supervisory or appellate authority has been expanded to include a judge's family members. Rule 3.7(3) modifies Canon 4C(3)(b)(iii), but excepts from the ban membership solicitation for law-related organizations.

Rule 3.7(A)(4) is new. It allows a judge to appear or speak at, receive an award at, be on the program of, or permit his or her name to be used in connection with events of an organization, unless the event is a fundraiser. In that event, the judge may only participate if the event is law-related. This exception changes the position set forth in Commentary to Canon 4C(3)(b), which prohibits a judge from being a speaker or guest of honor at any fundraiser, whether or not it is law-related.

Rule 3.7(A)(5) and Rule 3.7(A)(6) are, respectively, Canon 4C(b)(ii) and Canon 4C(a). Rule 3.7(B) is new and is intended to encourage judges to provide leadership in increasing pro bono representation.

Comments [1], [3] and [5] are new. Comment [1] incorporates the concept found in the Commentary to Canon 4D(5)(a), which prohibits a judge from accepting a gift or testimonial from organizations whose members comprise or frequently represent the same side in litigation, but expands the concept to all of the activities listed in Rule 3.7(A). Comment [2] is based on the Commentary to Canon 4C(3). Comment [4] is based on the Commentary to Canon 4C(3)(b). Comment [6] is new.

RULE 3.8 Appointments to Fiduciary Positions

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, conservator, attorney in fact, or other personal representative. A judge may, however, serve in one of these capacities for a member of the judge’s family, or in a fiduciary capacity for the judge’s place of worship, only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge’s obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Comparison to ABA Model Code

Rule 3.8 and its Comment are adopted from the 2007 ABA Model Code without modification, except for the addition of “conservator” to the list of fiduciary positions, and the additional exception for fiduciary positions at the judge’s place of worship.

Comparison to Current Tennessee Code

Rule 3.8 and subparagraphs (A), (B) and (C) are Canon 4E, with minor rewording. Rule 3.8(D) is new and is derived from the Commentary to Canon 4E. It now contains a definitive deadline for compliance after one becomes a judge. It also contains the additional exception for fiduciary positions at the judge’s place of worship.

RULE 3.9 Service as Arbitrator or Mediator

A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law. *See* Tenn. S. Ct. R. 31, §17 (permitting various part-time judges to serve as mediators) and Tenn. S. Ct. R. 31, §20 (authorizing trial judges to participate in judicial settlement conferences). *See also* Rule 2.6 and Comments [2], [3] and [4] thereto regarding the role of a judge in judicial settlement conferences. A judge who participates in a judicial settlement conference is precluded by Rule 2.6 from presiding over the trial or any other contested issues in that matter.

Comparison to ABA Model Code

Rule 3.9 and its Comment are adopted from the 2007 ABA Model Code. Modifications include the addition to the Comment of cross-references to Supreme Court Rule 31, sections 17 and 20, and Rule 2.6, and the new final sentence in the Comment.

Comparison to Current Tennessee Code

Rule 3.9 is Canon 4E, slightly reworded. The Comment is based on the Commentary to Canon 4E. It has been expanded and now also includes a cross-reference to Supreme Court Rule 31, section 17, permitting various part-time judges to serve as mediators, and section 20, authorizing trial judges to participate in judicial settlement conferences. Also cross-referenced is Rule 2.6 and Comments [2], [3] and [4] thereto, which prohibit a judge who participated in a judicial settlement conference from presiding over the trial.

RULE 3.10 Practice of Law

A judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family, but is prohibited from serving as the family member's lawyer in any forum. A newly elected or appointed judge can practice law only in an effort to wind up his or her practice, ceasing to practice as soon as reasonably possible and in no event longer than 180 days after assuming office.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. *See* Rule 1.3. This Rule does not prohibit the practice of law pursuant to military service. *See also* Tenn. Code Ann. §23-3-102 (public officers prohibited from practicing law) and §17-1-105 (judges and chancellors prohibited from practicing law).

[2] The only law practice allowable is that which is necessary to wind up a law practice. Accordingly, no new matters may be accepted. The 180-day bright line rule in winding up a law practice does not prohibit the judge from receiving fees after this deadline for services performed prior to the deadline. *See* State v. Lipford, 67 S.W.3d 79 (Tenn. Crim. App. 2001).

Comparison to ABA Model Code

Rule 3.10 is adopted from the 2007 ABA Model Code, but a sentence has been added to reflect Tennessee's provision that a new judge has 180 days to wind up his or her practice. Comment [1] is adopted, but expanded to permit the practice of law by judges in the military and to cross-reference related statutes. Comment [2] is new and explains the 180 day wind up rule for new judges, cross-referencing a relevant case.

Comparison to Current Tennessee Code

Rule 3.10 is essentially Canon 4G, but with an addition. The provision in the Commentary to 4G prohibiting a judge from acting "as an advocate or negotiator for a member of the judge's family" has been reworded to make it more narrow and has been moved to the black letter law. Comment [1] is a revised version of the Commentary to Canon 4G, but now also clarifies that judges in the military may practice law.

RULE 3.11 Financial, Business, or Remunerative Activities

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other personal or extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. *See* Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. *See* Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule. *See* Application VI.

Comparison to ABA Model Code

Rule 3.11 is adopted from the 2007 ABA Model Code without modification. Comment [1] is adopted but clarified to include personal as well as extrajudicial activities, just as in Rule 3.1. Comment [2] is adopted with a cross-reference to Application VI, which addresses the time at which this code becomes applicable to a judge.

Comparison to Current Tennessee Code

Rule 3.11(A) is derived from Canon 4D(2), excluding the last two clauses. Rule 3.11(B) is essentially the same as Canon 4D(3). Rule 3.11(C) combines some new provisions with elements of Canon 4D(1)(b) and Canon 4D(4). Comment [1] is largely new, but incorporates several aspects of the Commentary to Canon 4D. Comment [2] is derived from the black letter text of Canon 4D(4), with the addition of the cross-reference to Application VI.

RULE 3.12 Compensation for Extrajudicial Activities

Unless prohibited by law, a judge may accept reasonable compensation for personal or extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

COMMENT

[1] A judge may be permitted to accept honoraria, stipends, fees, wages, salaries, royalties, or other compensation for speaking, teaching, writing, and other extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed. The judge should be mindful, however, that judicial duties must take precedence over other activities. *See* Rule 2.1. Other law may prohibit the accepting of such compensation. *See, e.g.,* Tenn. Code Ann. §2-10-116.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. *See* Rule 3.15.

Comparison to ABA Model Code

Rule 3.12 and its Comments are adopted from the 2007 ABA Model Code with slight modification. The changes recognize that there are circumstances in which judges are prohibited by law from accepting compensation for personal or extrajudicial activities.

Comparison to Current Tennessee Code

Rule 3.12 encompasses the provisions of Canon 4H(1) that address compensation. Reimbursement of expenses is now addressed in Rule 3.14. Consistent with the remainder of the proposed code, the standard of “appearance of impropriety” has been replaced by concerns of undermining “the judge’s independence, integrity, or impartiality.” The additions to Comment [1] give notice that other provisions in Tennessee law should also be considered.

RULE 3.13 Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge;

(9) gifts incident to a public testimonial; or

(10) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal or civic activities permitted by this Code, if the same

invitation is offered to nonjudges who are engaged in similar ways in the activity, as is the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept gifts, loans, bequests, benefits, or other things of value. A judge must report such acceptance, to the extent required by Rule 3.15, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low, and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift, or required under paragraph (C) to publicly report it. A gift to a judge, other than ordinary social hospitality, from a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge, may be prohibited if acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[2] Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances, and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to

such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges, and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

[6] A judge shall only accept a gift incident to a public testimonial if the judge's receipt of the public testimonial is a permitted activity under Rule 3.7(A)(4) and Comment [1] thereto.

Comparison to ABA Model Code

Rule 3.13, subparagraphs (A) and (B)(1) through (B)(8) and all Comments are adopted from the 2007 ABA Model Code without modification. Subparagraphs (C)(1) and (C)(2) have been adopted as subparagraphs B(9) and B(10), thus obviating the reporting requirement. A new sentence is added to the end of Comment [1] to emphasize that gifts listed in Rule 3.13(B) as being permitted may indeed be prohibited under the limitations of Rule 3.13(A). Comment [6] is new.

Comparison to Current Tennessee Code

Rule 3.13 is derived from Canon 4D(5). Rule 3.13 (A) states the prohibition against accepting gifts and various other things of value if the acceptance thereof would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

Rule 3.13(B) lists more clearly those items than can be accepted without publicly reporting the receipt thereof, modified from Canon 4D(5). Unlike the ABA Model Code, the proposed new code retains the provisions of Canon 4D(5)(a) regarding gifts incident to a public testimonial without requiring reporting of the receipt thereof. The restriction in the Commentary to Canon 4D(5)(a), that the donor organization not be an organization whose members comprise or frequently represent the same side in litigation, is incorporated by the cross-reference to Rule 3.7(A)(4) and Comment [1] thereto.

Rule 3.13(B) also retains the provisions of Canon 4D(5)(a) regarding gifts in the form of invitations for the judge and a guest to attend, without charge, law-related functions without being required to report the receipt thereof. Rule 3.13(B)(10)(b) is new and permits, without requiring reporting the receipt thereof, invitations for the judge and a guest to attend events associated with the judge's educational, religious, charitable, fraternal or civic activities if the same invitation is offered to similarly situated nonjudges.

Rule 3.13(C) relaxes the requirements of Canon 4D(5), which absolutely prohibited the acceptance of gifts from lawyers or their clients who are likely to come before the court. Rule 3.13 allows the acceptance of such items, provided that they are reported pursuant to Rule 3.15 and that they are not prohibited under Rule 3.13(A) or elsewhere.

RULE 3.14 Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) [Intentionally omitted]

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. To comply with Rules 3.1 and 3.13(A), the judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(1) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(2) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(3) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(4) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(5) whether information concerning the activity and its funding sources is available upon inquiry;

(6) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(7) whether differing viewpoints are presented; and

(8) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Comparison to ABA Model Code

Rule 3.14(A) and (B) and Comments [1] and [3] are adopted from the 2007 ABA Model Code without modification. Rule 3.14(C), which requires a judge to report the waiver or partial waiver of expenses for a judge or his guest, is omitted. It is seen to be unworkable, as well as unnecessary in light of the other safeguards contained in the Rule. Comment [2] is modified to cross-reference Rules 3.1(A) and 3.13(A).

Comparison to Current Tennessee Code

Rule 3.14 is derived from Canon 4(H)(1) and permits a judge to receive reasonable reimbursement for or waiver of fees and expenses for the judge and, when appropriate, for the judge's guest. Because only reasonable reimbursements and waiver are permitted, no reporting is required. All Comments are new.

RULE 3.15 Reporting Requirements

(A) A judge shall publicly report the amount or value of:

**(1) compensation received for extrajudicial activities as permitted by Rule 3.12;
and**

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$250.

(3) [Intentionally omitted]

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation and the description of any gift, loan, bequest, benefit, or other thing of value accepted.

(C) The public report required by paragraph (A) shall be made at least annually.

(D) Reports made in compliance with this Rule shall be filed as public records in the office of the clerk of the court on which the judge serves and in the Administrative Office of the Courts and, when technically feasible, posted by the court or office personnel on the court's website and on the website of the Administrative Office of the Courts.

COMMENT

[1] Judges should be mindful that other reporting requirements may be applicable, such as those required with regard to election campaigns. *See* Comment [8] to Rule 4.2.

Comparison to ABA Model Code

Rule 3.15 is adopted from the 2007 ABA Model Code with several changes. The annual threshold of Rule 3.15(A)(2) is set at \$250. In order to be consistent with proposed Rule 3.14, the provisions related to reporting of waivers and reimbursements of expenses is omitted from subparagraphs (A)(3), (B) and (C). The places in which reports are to be filed have been clarified. A Comment has been added to remind judges that other reporting requirements exist as well.

Comparison to Current Tennessee Code

Rule 3.15 is based upon the public reporting requirement contained in Canon 4H(2) regarding compensation for extrajudicial activities and those of Canon 4D(5) regarding the public reporting of the acceptance of permissible gifts and other things of value, but the minimum value that triggers the reporting requirement has been raised from \$150 to \$250. Subparagraphs (B), (C), and (D) of Rule 3.15 clarify the mechanism for compliance with the reporting requirements.

CANON 4

A JUDGE OR CANDIDATE FOR JUDICIAL OFFICE SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE JUDICIARY.

Comparison to ABA Model Code

Canon 4 is adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Canon 4 and its Rules address the political and campaign activities of judges and judicial candidates and is derived from Canon 5 of the current Tennessee Code, although it has been significantly restructured and revised. It now applies specifically to campaign activity. The phrase “inappropriate political activities” is replaced with “activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.”

RULE 4.1 Political and Campaign Activities of Judges and Judicial Candidates in General

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

- (1) act as a leader in, or hold an office in, a political organization;**
- (2) make speeches on behalf of a political organization;**
- (3) [intentionally omitted];**
- (4) solicit funds for or pay an assessment to a political organization or candidate for public office;**
- (5) [intentionally omitted];**
- (6) [intentionally omitted];**
- (7) [intentionally omitted];**
- (8) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;**
- (9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;**
- (10) use court staff, facilities, or other court resources in a campaign for judicial office;**
- (11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;**
- (12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or**
- (13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.**

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

COMMENT

GENERAL CONSIDERATIONS

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates, taking into account the various methods of selecting judges.

[2] When a person becomes a judicial candidate, this Canon becomes applicable to his or her conduct.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[3A] Rule 4.1(A)(10) prohibits a judge from using court staff in a campaign for judicial office. The rule does not preclude voluntary involvement of court staff in campaign activities during non-working hours.

[4] [intentionally omitted]

[5] [intentionally omitted]

[6] [intentionally omitted]

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a

candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating

paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. *See* Rule 2.11.

Comparison to ABA Model Code

Rule 4.1 and its Comments are adopted from the 2007 ABA Model Code with substantial modification. Rules 4.1(A)(1), (2), (8), (9), (11), (12) and (13) and Rule 4.1(B) are adopted without modification, as are Comments [1] through [3] and [7] through [15]. Intentionally omitted are Rules 4.1(A)(3), (5), (6), and (7) and Comments [4] through [6]. From Rule 4.1(A)(4) the prohibition against making a contribution has been deleted. Rule 4.1(A)(10) prohibits using court staff, facilities or resources in any political campaign, not just a judicial campaign. Comment [3A] is new.

Comparison to Current Tennessee Code

Rule 4.1 applies to all judges, whether or not they are judicial candidates, and to all judicial candidates. It is based on various provisions in Canons 5A and 5C. Rules 4.1(A)(1), (2), and (4) are Canon 5A(1)(a), (c) and (d), respectively. The provisions of Canons 5A(1)(b) and (e) have been deleted. Rules 4.1(A)(8) and (9) come from Canon 5C(2). Rule 4.1(A)(10) is new. Rule 4.1(a)(11) is based in part on Canon 5A(3)(d)(ii). Rule 4.1(A)(12) is similar to Canon 3B(9), although it is new to the Canon on political and campaign activity. Rule 4.1(A)(13) is essentially Canon 5A(3)(d)(i). Rule 4.1(B) combines and simplifies Canons 5A(3)(a) and 5A(3)(b).

All of the Comments are new, but some include familiar concepts. For example, Comment [2] is Canon 5E, which has been removed from black letter law. Comment [7] is new but is based on a principle taken from Canon 5A(3)(d)(ii). Comments [8] and [9] are new, but are based on Canon 5A(3)(e), which has been removed from black letter law. Comment [10] is derived from portions of Canon 3B(9) and the Commentary thereto. Comment [14] is similar to the last paragraph in the Commentary to Canon 5A(3)(d). Comment [15] is similar to a portion of the Commentary to Canon 5A(3)(d).

RULE 4.2 Political and Campaign Activities of Judges and Judicial Candidates in Public Elections

(A) A judge or judicial candidate in a partisan, nonpartisan, or retention public election shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described in Rule 4.4, that the candidate is prohibited from doing by Rule 4.1.

(B) A candidate for elective judicial office may, unless prohibited by law, and not earlier than 180 days before the first applicable primary election, caucus, or general or retention election, establish a campaign committee pursuant to the provisions of Rule 4.4.

(2) – (6) [Intentionally omitted]

(C) [Intentionally omitted]

COMMENT

[1] [Intentionally omitted]

[1A] It is possible for some judicial offices to be subject to a primary and general election. It is possible for some counties to have a partisan primary for a particular office whereas another county might only have a non-partisan general election for the same office. It is also conceivable that the decision as to whether or not to hold a primary might not be made until within the 180-day period before the primary. Therefore, for the sake of uniformity, the 180-day period for all judicial offices that can possibly be subject to a primary election, whether or not there actually is a primary, shall begin to run from the date the primary would be held.

[2] [Intentionally omitted]

[3] In partisan public elections for judicial office, a candidate may be nominated by, affiliated with, or otherwise publicly identified or associated with a political organization, including a political party. This relationship may be maintained throughout the period of the public campaign, and may include use of political party or similar designations on campaign literature and on the ballot.

[4] [Intentionally omitted]

[5] Judicial candidates are permitted to attend or purchase tickets for dinners and other events sponsored by political organizations.

[6] [Intentionally omitted]

[6A] While judges and judicial candidates are not prohibited from endorsing or opposing other candidates for public office, such activity may be imprudent, and they should be mindful that such conduct could result in disqualification of the judge in subsequent matters.

[7] [Intentionally omitted]

[8] Compliance with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction includes, but is not limited to, the provisions of Tennessee Code Annotated sections 2-10-101 et seq., the Campaign Financial Disclosure Act, and Tennessee Code Annotated sections 2-10-301 et seq., the Campaign Contribution Limits Act.

Comparison to ABA Model Code

Rule 4.2 and its Comments are adopted from the 2007 ABA Model Code with several changes. The Rule specifically applies to judges as well as judicial candidates in recognition of the fact that these requirements should apply to a sitting judge who plans to run, but has not yet initiated the process. Rule 4.2(B)(1) is modified to limit establishment of a campaign committee to 180 days prior to the first applicable primary election. Rules 4.2(B)(2) through 4.2(B)(6) and 4.2(C) are deleted, as are Comments [1], [2], [4], [6] and [7]. Comments [1A], [6A] and [8] are new.

Comparison to Current Tennessee Code

Rule 4.2 applies to judges and judicial candidates running in partisan, non-partisan, and retention elections. Rule 4.2(A) lists mandatory obligations of a candidate. Rule 4.2(A)(1) and (A)(4) are based on provisions contained in Canon 5A(3). Subparagraphs (A)(2) and (A)(3) are new. 4.2(B) addresses the time at which a candidate for elective judicial office may establish a campaign committee.

The Comments are new. Comment [1A] clarifies the date from which the 180 day period of Rule 4.2(B) is calculated and is based on the Commentary to Canon 5C(2). Comment [6A] cautions that endorsement of other political candidates, while not prohibited, can result in disqualification in subsequent matters that come before the judge. New Comment [8] cross-references Tennessee election law.

RULE 4.3 Activities of Candidates for Appointive Judicial Office

A candidate for appointment to judicial office may:

- (A) communicate with the appointing or confirming authority, including any selection, screening, or nominating commission or similar agency; and**
- (B) seek endorsements for the appointment from any person or organization.**

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing or confirming authority, a candidate for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. *See* Rule 4.1(A)(13).

Comparison to ABA Model Code

Rule 4.3 and its Comment are adopted from the 2007 ABA Model Code without modification, except for the deletion of the phrase “other than a partisan political organization” from the end of Rule 4.3(B)

Comparison to Current Tennessee Code

Rule 4.3 addresses candidates for appointive judicial office. Rule 4.3(A) is based on Canon 5B(2)(a)(i), but is slightly expanded. Rule 4.3(B) is based on Canon 5B(2)(a)(ii). Comment [1] is new.

RULE 4.4 Campaign Committees

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions allowable by law.

(2) not to solicit or accept contributions for a candidate's current campaign more than one hundred eighty (180) days before an election (*see* Rule 4.2 Comment [1] as to the calculation of this time period), nor more than ninety (90) days after the last election in which the candidate participates; and

(3) to comply with all applicable requirements for disclosure and divestiture of campaign contributions as required by law. Tennessee law requires, for example, that a judicial candidate personally file campaign finance reports

COMMENT

[1] Judges and judicial candidates are prohibited from personally soliciting campaign contributions or personally accepting campaign contributions. *See* Rule 4.1(A)(8).

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees. Tennessee law requires, for example, that a judicial candidate file and swear or affirm to the truth of contents of campaign disclosure statements. Required information includes the identity of contributors who contributed more than one hundred dollars, as well as the amounts of their contributions. *See, e.g.,* Tenn. Code Ann. §2-10-105.

[3] At the start of a campaign, the candidate must instruct the campaign committee to solicit or accept only such contributions as are allowable by law. The campaign committee may receive a contribution from a lawyer not to exceed the amount authorized by law. More specifically, Tennessee Code Annotated sections 2-10-301 et seq. set the campaign contribution limits applicable to judicial candidates. The candidate should instruct the campaign committee to be cautious in connection with contributions from parties with pending litigation or those in managerial positions with parties with pending litigation, assuming the committee is aware that the contribution is from such a person. Such contributions could create grounds for disqualification if the candidate is elected to judicial office. *See* Rule 2.11. There is no requirement that the judicial candidate advise the committee of pending litigation.

Comparison to ABA Model Code

Rule 4.4(A) is adopted from the 2007 ABA Model Code without modification. Rule 4.4(B) and the Comments are modified to correlate to the requirements of law, including Tennessee election law.

Comparison to Current Tennessee Code

Rule 4.4(A) is based on a portion of Canon 5C(2) and the Commentary thereto. It contains an explicit requirement that the candidate is responsible for ensuring that his or her campaign committee complies with this Code and the law. Rather than adopting the restrictions in the Model Rule regarding the limits on campaign contributions or the authorities to whom contributions must be reported, Rules 4.4(B)(1) and (B)(3) generally make reference to the applicable provisions of law. This is consistent with current Tennessee Code provisions in Canons 5C(2) and (3). Rule 4.4(B)(2) specifies the window of time in which campaign contributions may be solicited and accepted, as is currently provided in Canon 5C(2) and the Commentary thereto.

Comment [1] is based in part on the Commentary following Canon 5C(2). Comment [2] contains aspects from the second sentence of Canon 5C(2), but also cross-references Tennessee law. Comment [3] is substantially new.

RULE 4.5 Activities of Judges Who Become Candidates for Nonjudicial Office

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office, and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The “resign to run” rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy, and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the “resign to run” rule.

Comparison to ABA Model Code

Rule 4.5 and its Comments are adopted from the 2007 ABA Model Code without modification.

Comparison to Current Tennessee Code

Rule 4.5 addresses judges who become candidates for nonjudicial office. Rule 4.5(A) is the “resign-to-run rule” based on Canon 5A(2). Rule 4.5(B) is new, but is implicit in and derived from Canon 5A(2). The Comments are new.

